2974.

SUPREME COURT OF THE UNITED STATES.

No. 142.

JOHN CLARK, PLAINTIFF IN ERROR,

vs.

JAMES McCLINTOCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,

District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two—

Present, the honorable John Glenn, judge of Maryland district; Z. Collins Lee, esq., attorney; Thomas H. Kent, (of Jos.,) esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

JAMES MCCLINTOCK
vs.
JOHN CLARK.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-one, the said James McClintock, by William Hamilton, his attorney, prosecuted and sued forth, out of the circuit court here, the writ of the United States of America of capias ad respondendum, directed to the marshal of the Maryland district aforesaid, in the words, and of the tenor following, to wit:

Writ.

THE UNITED STATES OF AMERICA,

District of Maryland, to wit:

To the marshal for Maryland district, greeting:

[L. S.] We command you that you take John Clark, a citizen of the State of Maryland, and late of the Maryland district, if he shall be found in your district, and that him so taken you safe keep, so that you have his body before the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, at the United States court-room in the city of Baltimore, on the first Monday in April next, to answer unto James McClintock, a citizen of the State of Pennsylvania, in a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then and there this writ.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday of Dec[illegible]ber in the year of our Lord one thousand eight hundred and fifty.

W. H. Issued 27th March, 1851.

THO. SPICER,
Clerk circuit court.

And the aforesaid James McClintock, by his attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said John Clark in the plea aforesaid, in form following, to wit:

Declaration.

Circuit court of the United States, for the fourth circuit, in and for the district of Maryland.

MARYLAND DISTRICT, *to wit:*

John Clark, a citizen of the State of Maryland, and late of the Maryland district, was attached to answer unto James McClintock, a citizen of the State of Pennsylvania, in a plea of trespass on the case, &c. And whereupon the said James McClintock, by William Hamilton, jun., his attorney, complains, for that whereas the said John Clark heretofore, to wit, on the fifteenth day of July, in the year of our Lord eighteen hundred and forty-nine, at Philadelphia, to wit, at the district aforesaid, made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said note to Hirst, Clark & Co., then and there citizens of the State of Pennsylvania, and thereby then and there promised, seven months after the date of said note, to pay unto the order of Hirst, Clark & Co., fifteen hundred dollars, without defalcation, at the Girard Bank, for value received.

And the said Hirst, Clark & Co., to whom, or to whose order, the payment of the said sum of money, in the said note specified, was to be made, after the making of the said note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, at the district aforesaid, endorsed the said note; by which said endorsement the said Hirst, Clark & Co., then and there appointed the said sum of money, in the said note specified, to be paid to the said Jas. McClintock, and then and there delivered the said note so endorsed to the said James McClintock. By reason of which premises, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiff to pay him the sum of money in the said note specified, according to the tenor and effect of the said note.

And whereas also, the said John Clark afterwards, to wit, on the first day of August, in the year of our Lord eighteen hundred and forty-nine, at Philadelphia, to wit, at the district aforesaid, made his certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said last mentioned note to Hirst, Clark & Co., then and there citizens of the State of Pennsylvania, and thereby then and there promised, six months after the *said* of the

said last mentioned note, to pay unto the order of Hirst, Clark & Co., twelve hundred dollars, without defalcation, at the Girard Bank, for value received.

And the said Hirst, Clark & Co., to whom, or to whose order, the payment of the said sum of money, in the said last mentioned note specified, was to be made, after the making of the said last mentioned note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, at the district aforesaid, endorsed the said last mentioned note; by which said endorsement the said Hirst, Clark & Co., then and there appointed the said sum of money, in the said last mentioned note specified, to be paid to the said James McClintock, and then and there delivered the said last mentioned note, so endorsed, to the said James McClintock. By reason of which premises, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiff to pay him the sum of money in the said note specified, according to the tenor and effect of the said note.

And whereas, also, the said John Clark afterwards, to wit, on the fifteenth day of August, in the year of our Lord eighteen hundred and forty-nine, at Philadelphia, to wit, at the district aforesaid, made his certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said last mentioned note to Hirst, Clark & Co., then and there citizens of the State of Pennsylvania, and thereby, then and there, promised, five months after the date of the said last mentioned note, to pay unto the order of Hirst, Clark & Co., twelve hundred dollars without defalcation, at the Girard Bank, for value received. And the said Hirst, Clark & Co., to whom, or to whose order, the payment of the said sum of money, in the said last mentioned note specified, was to be made, after the making of the said note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, at the district aforesaid, endorsed the said note, by which said endorsement the said Hirst, Clark & Co., then and there appointed the said sum of money in the said note specified to be paid to the said James McClintock, and then and there delivered the said note so endorsed to the said James McClintock; by reason of which premises, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiff to pay him the sum of money in the said note specified, according to the tenor and effect of the said note.

And whereas the said defendant afterwards, to wit, on the first day of March, in the year of our Lord eighteen hundred and fifty-one, to wit, at the district aforesaid, was indebted to the said plaintiff in another large sum of money, to wit, the sum of five thousand dollars, lawful money, for money by the said plaintiff before that time lent and advanced to, and paid, laid out, and expended for the said defendant, and at his special instance and request; and also in another like sum of money, for so much other money by the said defendant before that time had and received, to and for the use of the said plaintiff; and being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said several sums of money in this count mentioned, when the said defendant should be thereunto requested.

And whereas, also, the said defendant afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, accounted with the said plaintiff of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiff, and then and there in arrear and unpaid; and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiff in another large sum of money, to wit, in the further sum of five thousand dollars, of like lawful money; and being so found in arrear and indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiff to pay him the last mentioned sum of money, when the said defendant should be thereto afterwards requested.

Nevertheless the said defendant, not regarding his said promises and undertakings, has not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said plaintiff, (although so to do the said defendant was requested by the said plaintiff afterwards, to wit, on the day and year last aforesaid, and often afterwards, at the district aforesaid,) but to pay the same the said defendant has hitherto altogether refused, and does still refuse so to do, to the damage of the said plaintiff ten thousand dollars, and therefore he brings his suit, &c.

WM. HAMILTON, JR.,
For plaintiff.

A copy of which said declaration was made and sent with the said writ to the marshal of the Maryland district aforesaid, thereon endorsed "case, copy nar. within to be served on the defendant with the writ."

At which mentioned first mentioned first Monday in April, in the year of our Lord one thousand eight hundred and fifty-one, being the day of the return of the aforegoing writ, comes into the circuit court here the said James McClintock, by his attorney aforesaid, and the marshal of the Maryland district aforesaid, to wit, Thomas H. Kent,

(of Joseph,) gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Cepi and bond. Thos. H. Kent, (of Jos.,) U. S. marshal."

And the said marshal of the Maryland district aforesaid, although solemnly called upon by order of the court here, on motion of the said Jas. McClintock, by his attorney aforesaid, to bring into court here the body of the said John Clark, whom he ought to have here this day in pursuance of the command of the writ aforesaid, and according to the tenor of his return thereof as aforesaid, brings not into court here the said John Clark, but therein doth make default.

Rule and amerciament.

Whereupon, on motion of the said James McClintock, by his attorney aforesaid, it is ruled by the court here that the said Thomas H. Kent, (of Joseph,) marshal of the Maryland district aforesaid, be amerced in the sum of ten thousand dollars, the damages aforesaid in the declaration of the said James McClintock in the plea aforesaid, and the costs and charges that have accrued, or may accrue, in the plea aforesaid, in case he brings not into court here the body of the said John Clark on the first Monday of November next; the same day is given to the said James McClintock also.

Amerciament stricken out.

And the said Thomas H. Kent, (of Joseph,) marshal of the Maryland district aforesaid, in pursuance of the command of the writ aforesaid, and according to the tenor of his return thereof as aforesaid, and in compliance with the rule of the court aforesaid, and to save the amerciament aforesaid, brings into court here the body of the said John Clark; whereupon it is ordered by the court here that the rule and amerciament aforesaid be discharged and stricken out.

Rule special bail.

And thereupon, on motion of the said James McClintock, by his attorney aforesaid, it is ruled by the court here that the said John Clark give special bail in the plea aforesaid.

Special bail entered.

Whereupon a certain George W. Ward, of the said district, comes here into court in his proper person, and with the consent of the said James McClintock, by his attorney aforesaid, and undertakes for the said John Clark, that in case the aforesaid James McClintock shall recover judgment against the said John Clark, in the plea aforesaid, or that the said John Clark shall be therein legally convict[ed], that then the said John Clark shall pay the condemnation of the court there-

upon, or render his body to the custody of the marshal of the Maryland district aforesaid in satisfaction thereof, or that he, the said George W. Ward, will do the same for him.

Rule plea.

And thereupon, on motion of the said James McClintock, by his attorney aforesaid, it is ruled by the court here that the said John Clark answer to the declaration aforesaid of the said James McClintock in the plea aforesaid, or judgment by the court here will be entered against him in default thereof.

And the said John Clark, by Philip Francis Thomas, his attorney, defends the force and injury when, &c., and prays leave of the court here to imparle until the first Monday in November next, and then to answer to the declaration aforesaid of the said James McClintock in the plea aforesaid, and to him it is granted; the same day is given to the aforesaid James McClintock also. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-one, to which said day the said John Clark had leave to imparle, and then to answer to the declaration aforesaid of the said James McClintock in the plea aforesaid, comes again into the circuit court here, as well the said James McClintock, by William Hamilton, jr., and John Nelson, his attorneys, as the said John Clark, by Philip Francis Thomas and William Schley, his attorneys.

Plea.

And the said John, by his attorneys aforesaid, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiff hath above thereof *thereof* complained against him; and of this he puts himself upon the country, &c.

Issue.

And the said James McClintock, in like manner, &c.

Therefore let a jury thereon appear before the court here on the first Monday in April next, by whom, and so forth, and who neither, and so forth, to recognise, and so forth, because as well, and so forth.

And now here, at this day, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, comes again into the circuit court here, as well the aforesaid James McClintock, by his attorneys aforesaid, as the said John Clark, by his attorneys aforesaid.

Whereupon, for trying the issue aforesaid, it is ordered by the court

here that twenty persons, from the pannel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury.

William O. Welch, George C. Davis, Joshua H. Shipley, William B. Hammond, William H. Johnson, Isaac Owens, (of Jas.,) William Webster, John R. Magruder, James W. Collins, Ephraim G. Cox, Caleb Littig, William E. Coale.

Verdict.

Who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said John Clark did assume upon himself in manner and form as the aforesaid James McClintock within against him hath complained; and they assess the damages of the said James McClintock, sustained by occasion of the non-performance of the promises and assumptions aforesaid, to the sum of four thousand four hundred and twenty-two dollars and thirty cents.

Judgment.

Therefore it is considered by the court here that the aforesaid James McClintock recover against the said John Clark, as well the sum of four thousand four hundred and twenty-two dollars and thirty cents, current money, his damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, to be sustained by the non-performance of the promises and assumptions aforesaid, as the sum of
by the court here unto him, the said James McClintock, on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and expended; and the said John Clark, in mercy, &c.

Memorandum.

Judgment rendered in this cause on this 28th day of April, in the year of our Lord one thousand eight hundred and fifty-two, for the damages laid in the declaration, and costs of suit. The said damages to be released on payment of the sum of $4,422 30, with interest from the 28th day of April, 1852, till paid, and costs.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said John Clark, by his attorneys aforesaid, tendered to the court here the following bills of exception, which were by the court signed and sealed, and which are in form following, to wit:

JAMES McCLINTOCK
vs.
JOHN CLARK.

In the circuit court of the United States, in and for the fourth circuit, and district of Maryland. April term, 1852.

First exception.

At the trial of this cause the plaintiff, to maintain the issue on his part joined, offered in evidence to the jury the three following promissory notes, the handwriting of the defendant, John Clark, being admitted by him to be his proper handwriting; and the plaintiff having proved, before reading said notes in evidence, by James Stevens, a competent witness, that the endorsement on said several notes of the name of Hirst, Clark & Co., was in the handwriting of John S. Clark; and that Andrew H. Hirst, said John S. Clark, and one Thomas B. Price, were the members of said firm of Hirst, Clark & Co., whilst it existed; and the plaintiff having also proved the endorsement of the name of James McClintock & Co. to be in the handwriting of the plaintiff in this suit, and that said firm consisted of said plaintiff and a certain George Grant, as partners. It was admitted that said Grant is still living. The plaintiff also offered in evidence the protests of said several notes, and which said notes and protests were as follows:

Note.

UNITED STATES OF AMERICA,
$1,500 *Philadelphia, July* 15, 1849.

Seven months after date, I promise to pay, to the order of Hirst Clark & Co., fifteen hundred dollars, no 100ths, without defalcation, value received, payable at the Girard Bank.

JOHN CLARK.

Endorsed:—HIRST, CLARK & Co.,
JAMES McCLINTOCK & Co.

Be it remembered, that on this 24th day of April, in the year 1852, before the subscriber, clerk of the criminal court of Baltimore city, personally appears James McClintock, the holder of a certain promissory note or instrument of writing hereon endorsed, and made oath on the holy evangely of Almighty God, that at the time of receiving said note or instrument of writing, he did not know of the requisition of the act of assembly of 1844, chapter 280, requiring said note or instrument of writing to be stamped, as by therein provided; and at [the] same time the said James McClintock paid me the duty chargeable by law on said note or instrument of writing, and ten dollars in addition thereto.

THOS. H. MOORE,
Clerk, crim. court of Balt.

Protest.

UNITED STATES OF AMERICA,
$1500. *Philadelphia, July* 15, 1849.

Seven months after date, I promise to pay, to the order of Hirst, Clark & Co., fifteen hundred dollars, no 100th, without defalcation, value received, payable at the Girard Bank.
No. . . . JOHN CLARK.

Endorsed:—HIRST, CLARK & Co.,
JAMES MCCLINTOCK & Co.

Be it known, that on the day of the date hereof, at the request of the Girard Bank, the holder of the original note, of which a true copy is above written, I, Peter Crans, notary public of the Commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in the county of Philadelphia, presented the same at the Girard Bank to a proper clerk, there duly acting and attending, and demanded the payment thereof, which was refused, and answer made that it could not be paid, no funds being provided there by the drawer for its payment.

I therefore duly notified the drawer and endorsers of the non payment of the same; whereupon, I, the said notary, at the request aforesaid, have protested, and do hereby solemnly protest, against the drawer and endorsers of the said note, and all others concerned, for all exchange, re-exchange, costs, damages, and interests, suffered and to be suffered, for want of payment thereof.

Thus done and protested at the city of Philadelphia, in the
[SEAL.] county aforesaid, the eighteenth day of February, 1850. In testimonium veritatis.

PETER CRANS,
Notary public.

JOHN CLARK.

$1 37½.
Endorsed:—HIRST, CLARK & Co.,
JAMES MCCLINTOCK & Co.
Ex. $1 37½. The Girard Bank.

Note.

$1200 00. PHILADELPHIA, *August* 1*st*, 1849.

Six months after date, I promised to pay to the order of Hirst, Clark & Co., twelve hundred dollars, no 100th, without defalcation, value received, payable at the Girard Bank.
No.—— JOHN CLARK.

Endorsed:—HIRST, CLARK & Co.,
JAMES MCCLINTOCK & Co.

Be it remembered, that on this 24th day of April, in the year 1852, before the subscriber, clerk of the criminal court of Baltimore city, personally appears James McClintock, the holder of a certain promissory note or instrument of writing hereon endorsed, and made oath on the holy evangely of Almighty God, that at the time of receiving said note or instrument of writing he did not know of the requisition of the act of assembly of 1844, chapter 280, requiring said note or instrument of writing to be stamped as thereby provided; and at the same time the said James McClintock paid me the duty chargeable by law on said note or instrument of writing, and ten dollars in addition thereto.

THOS. H. MOORE,
Clerk, crim. court of Balt.

Protest.

UNITED STATES OF AMERICA,
$1200 00. *Philadelphia, August* 1, 1849.

Six months after date, I promise to pay to the order of Hirst, Clark & Co., twelve hundred dollars, no 100th, without defalcation, value received, payable at the Girard Bank.

JOHN CLARK.

Endorsed:—HIRST, CLARK & Co.,
JAMES MCCLINTOCK & Co.

Be it known, that on the day of the date hereof, at the request of the Girard Bank, the holder of the original note, of which a true copy is above written, I, Peter Crans, notary public for the Commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in the county of Philadelphia, presented the same at the Girard Bank, to a proper clerk there duly acting and attending, and demanded the payment thereof, which was refused, and answer made that it could not be paid, no funds being provided by the drawer for its payment.

I therefore duly notified the drawer and endorsers of the non payment of the same; whereupon, I, the said notary, at the request aforesaid, have protested, and do hereby solemnly protest, against the drawer and endorsers of the said note, and all others concerned, for all exchange, re-exchange, costs, damages, and interests, suffered and to be suffered, for want of payment thereof.

Thus done and protested at the city of Philadelphia, in the county aforesaid, the fourth day of February, 1850.

[SEAL.] In testimonium veritatis.

PETER CRANS, *Notary public.*

JOHN CLARK.

Endorsed—
HIRST, CLARK & Co.,
JAMES MCCLINTOCK & Co.

Ex. 1 37. The Girard Bank.

Note.

PHILADELPHIA, *August 15th*, 1849.

$1,200. Five months after date I promise to pay to the order of Hirst, Clark & Co., twelve hundred dollars, without defalcation, value received. Payable at the Girard Bank.

JOHN CLARK.

Endorsed—
HIRST, CLARK & Co.,
JAMES McCLINTOCK & Co.

Be it remembered, that on this twenty-fourth day of April, in the year one thousand eight hundred and fifty-two, before the subscriber, clerk of the criminal court of Baltimore city, personally appears James McClintock, the holder of a certain promissory note or instrument of writing hereon endorsed, and made oath, on the holy evangely of Almighty God, that at the time of receiving said note or instrument of writing he did not know of the requisition of the act of assembly of 1844, chapter 280, requiring said note or instrument of writing to be stamped, as by [law] therein provided; and at the same time the said James McClintock paid me the duty chargeable by law on said note or instrument of writing, and ten dollars in addition thereto.

THOS. H. MOORE,
Clerk, criminal court, Baltimore.

Protest.

UNITED STATES OF AMERICA,
Philadelphia, August 15, 1849.

$1200. Five months after date I promise to pay to the order of Hirst, Clark & Co., twelve hundred dollars, without defalcation, value received. Payable at the Girard Bank.

No. JOHN CLARK.

Endorsed—
HIRST, CLARK & Co.,
JAMES McCLINTOCK & Co.

Be it known, that on the day of the date hereof, at the request [of] the Girard Bank, the holder of the original note of which a true copy is above written, I, Peter Crans, notary public for the Commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in the county of Philadelphia, presented the same at the Girard Bank to a proper clerk there duly acting and attending, and demanded the payment thereof, which was refused, and answer made that it could not be paid, no funds being provided there by the drawer for its payment.

I therefore duly notified the drawer and endorsers of the non-pay-

ment of the same; whereupon I, the said notary, at the request aforesaid, have protested, and do hereby solemnly protest, against [the] drawer and endorsers of the said note, and all others concerned, for all exchange, re-exchange, costs, damages, and interest, suffered and to be suffered, for want of payment thereof.

Thus done and protested at the city of Philadelphia, in the county aforesaid, the eighteenth day of January, 1850.

[SEAL.] In testimonium veritatis.

PETER CRANS, *Notary public.*

JOHN CLARK.

Endorsed—

HIRST, CLARK & Co.,
JAMES McCLINTOCK & Co.

Ex. 1 37. Girard Bank.

The plaintiff here rested his case.

Evidence of James Stevens.

The defendant then proved, by said James Stevens, that he was the book-keeper of the said firm of Hirst, Clark and Company, during its continuance in business; that said firm was dissolved on or about the first day of July, 1849, and it was admitted that the following notice of dissolution was signed by several partners, and was published on the day of its date in the North American and United States Gazette, of Philadelphia.

Dissolution.

The copartnership heretofore existing between the subscribers, under the firm of Hirst, Clark & Co., is this day dissolved by mutual consent.

The business of the firm will be settled up by John S. Clark, at No. 21, Church alley.

A. H. HIRST,
JOHN S. CLARK,
THOS. B. PRICE.

PHILADELPHIA, *July 2d,* 1849.

True copy from North American and United States Gazette.

The defendant also proved, by the same witness, that after the dissolution of said firm of Hirst, Clark & Co., he continued to act in the settlement of the business of said firm, and had the active supervision of such settlement.

The defendant also proved, by the same witness, that the notes offered in evidence in this cause by the plaintiff, were received some time in the month of September, 1849, after the middle of said month, and that he, as acting in the business of the settlement of the business, received the letter in which said notes were inclosed, and handed the same with the notes therein inclosed to said John S. Clark.

Evidence of John S. Clark.

The defendant then produced said John S. Clark, and proved to the court that the letter referred to by the said witness, Stevens, has been lost or destroyed; that he has made careful search for the same amongst his papers, and amongst the papers appertaining to the business of said former partnership of Hirst, Clark & Co., and that he has not been able to find it.

James Stevens.

The defendant then proved, by said James Stevens, that the said letter bore the post office mark; that it was mailed at Trappe, in Talbot county, Maryland, and that said notes were inclosed in said letter. The said witness further proved, that neither the plaintiff nor the said firm of James McClintock & Co. had, at any time, any dealings or transactions with said firm of Hirst, Clark & Co., either during its continuance as a firm or at any time afterwards; that neither said plaintiff, nor said firm of James McClintock & Co., were creditors of said firm, nor had any claims against said firm in any way.

The said witness further proved, that said firm of Hirst, Clark & Co., failed in business some time before the dissolution aforesaid, and that they failed for a heavy amount of liabilities, and that their failure was known all over Philadelphia.

The said witness further testified, that said firm of Hirst, Clark & Co., whilst engaged in business in Philadelphia, carried on the same in Market street, between 2d and 3d streets, in Philadelphia; and that the plaintiff, during the same period, carried on business in 3d street, between Market and Arch streets, in said city—the distance between the two places of business being about one and a half squares. The said witness further proved, that said firm of James McClintock & Co. was engaged in the cloth business as merchants, and that said McClintock sometimes discounted paper, and was also much at the public house of Mrs. Dunlap, his mother, in 3d street; that the plaintiff and said Hirst and said Price were intimate, and that the latter of the two was much at the house of Mrs. Dunlap, and boarded there; that the plaintiff knew of the failure and dissolution of said firm of Hirst, Clark & Co., at the time the said notes were received by him, or by said firm of James McClintock & Co. The said witness further stated, that nothing came into the business of said firm for said notes, nor was any account of their disposition ever given to him as the person employed in the settling of said business. He knows nothing, of his own knowledge, of the consideration on which said notes, or any of them, were endorsed by said John S. Clark.

The said witness also proved, that said John Clark, the maker of said notes, was not at any time indebted to said firm of Hirst, Clark & Co., but was, on the contrary, a creditor of said firm for advances of money and paper to an amount of upwards of forty thousand dollars.

Evidence of G. W. Jenkins.

The defendant also proved, by George W. Jenkins, a competent witness, that he knows the defendant, John Clark; that he lives in Trappe, in Talbot county, and witness is there engaged with him in business, and that he knows that said Clark was not in Philadelphia during the year 1849 at any period after the month of March of that year.

The defendant also offered in evidence the following letter, the handwriting of the same being admitted to be the plaintiff's:

Letter from McClintock & Co. to Jno. Clark, 21st Sept., 1850.

PHILADELPHIA, *Sept.* 21, 1850.

Mr. JOHN CLARK.

DEAR SIR: Will you do me the favor to inform me by return mail at what date or dates I may draw on you for the amount of the notes we hold of yours endorsed by Hirst, Clark & Co., or if you would prefer having them renewed at a short date? We are greatly in want of the money, and your early attention will much oblige,

Yours, truly,

JAMES McCLINTOCK & CO.

The defendant then produced as a witness John S. Clark, and the said witness having been duly sworn, the defendant, by his counsel, propounded to the said witness the following question:

"At what place were the said notes made?".

But the plaintiff, by his counsel, objected to the said question, upon the ground that said witness is not competent to testify in this case as to the fact referred to in said inquiry; which objection was sustained by the court, and the said witness was not permitted to answer said question, and the question itself was overruled and set aside, on the ground that the same was an improper question to be propounded to, or answered by, said witness. To which opinion and decision of the court the defendant, by his counsel, prayed leave to except, and that the court would sign and seal this his first bill of exceptions, according to the form of the statute in such case made and provided; and which is accordingly done this 27th day of April, 1852.

JOHN GLENN. [SEAL.]

Second bill of exceptions.

Second exception.

JAMES McCLINTOCK
vs.
JOHN CLARK.

The defendant then propounded to said John S. Clark the following question:

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"Was there any consideration, proceeding from Hirst, Clark & Co., or from any member of that firm, to John Clark, the defendant, for said notes, or for any of said notes?["] To which question the plaintiff, by his counsel, objected, as being a question improper to be answered by said witness; of which opinion the court was, and rejected said question, and refused to allow the same to be answered by said witness. To which opinion and refusal of the court the defendant, by his counsel, prayed leave to except, and that the court would sign and seal this his second bill of exceptions, according to the form of the statute in such case made and provided; and which is accordingly done this 27th day of April, 1852.

JOHN GLENN. [SEAL.]

Third exception.

JAMES MCCLINTOCK
vs.
JOHN CLARK.

The defendant then propounded to the said John S. Clark the following question:

"Have you had at any time, since the endorsement by you of said several notes, or of any of said notes, offered in evidence in this case, any conversation with the plaintiff in this case, in reference to the time when he received these notes, or from whom he received them?["] But the plaintiff objected to said question as improper to be propounded to or answered by said witness; and the court sustained the said objection, and refused to permit said question to be answered by said witness. To which opinion and decision of the court the defendant, by his counsel, prayed leave to except, according to the form of the statute in such case made and provided, and that the court would sign and seal this his third bill of exceptions; and which is accordingly done this 27th day of April, 1852.

JOHN GLENN. [SEAL.]

4th exception.

JAMES MCCLINTOCK
vs.
JOHN CLARK.

The defendent by his counsel then offered the three following prayers to the court:

Defendant's prayers.

The defendant by his counsel prays the court to instruct the jury as follows:

1. That if they shall find, from the evidence in the case, that the firm of Hirst, Clark & Co., mentioned as payees in the notes offered in evidence in this case, was dissolved on the 21st day of July, 1849, and

that said firm consisted of Andrew H. Hirst, John S. Clark, and Thomas B. Price, as partners thereof; and shall further find, from the evidence in the cause, that the plaintiff received said notes as late as after the middle of September, 1849, and before the first of October of that year, and that when he received them he knew that said firm had failed and had dissolved; and shall find from the evidence that the plaintiff never, at any time, had any dealings or transactions with said firm of Hirst, Clark & Co., either before or after the dissolution of the same; and shall not find from the evidence in the cause that the same were, or that any of the said notes was, received in the usual or ordinary course of business, or received with the knowledge or consent of all the said partners, or received on account of some partnership dealings or transactions, then the plaintiff is not entitled to recover in this suit.

2d. If the jury shall find, from the evidence in the cause, that the notes offered in evidence in this case belonged to the firm of James McClintock & Co., on the 21st of September, 1850, and that said firm was composed of the plaintiff and a certain Grant, and that said Grant is still in life, then in order to entitle the plaintiff to recover the amount of said notes in this suit, it is incumbent on the plaintiff to establish, by competent legal testimony, that the said notes were duly transferred to him by said firm of James McClintock & Co., before the commencement of this suit.

3d. If the jury shall find, from the evidence in the cause, that said notes were made in Maryland, and as late in that year as the dates of said notes, are instruments of writing, which are required to be stamped by the law of Maryland of 1844, chapter 280; and the defendant further prays the court to instruct the jury, that if they shall find that said notes were made in Maryland, then the endorsements made thereon by Thomas H. Moore are not sufficient to entitle the plaintiff to read said notes in evidence to the jury.

But the court refused to grant said prayers, or any of said prayers, but refused all of said prayers. To which refusal of the court to grant the said several prayers, the defendant by his counsel prayed leave to except, and prayed that the court would sign and seal this his fourth bill of exceptions, according to the form of the statute in such case made and provided; and which is accordingly done, this 28th day of April, 1852.

JOHN GLENN. [SEAL.]

And now here at this day, to wit, the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-two, the said John Clark produced to the circuit court here the writ of the said United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next; which said writ of error is in the words and of the tenor following to wit:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, greeting:

[L. S.] Because in the record and proceedings, as also in the rendition of judgment of a plea which is in the said court before you, or some of you, between James McClintock, plaintiff, and John Clark, defendant, a manifest error hath happened, to the great damage of the said John Clark, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-one.

Issued 28th April, 1852.

THO. SPICER,
Clerk, circuit court.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.

Know all men by these presents, that we, John Clark, George W. Ward, and John W. Bruff, are held and firmly bound unto James McClintock in the just and full sum of nine thousand dollars, lawful money of the United States, to be paid to the said James McClintock, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty two.

Whereas, at a circuit court of the United States, for the fourth cir-

cuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, the said James McClintock, by the judgment of the same court, recovered against the said John Clark the sum of four thousand four hundred and twenty-two dollars and thirty cents, and costs.

And whereas the said John Clark hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said James McClintock, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the judgment aforesaid, so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Now, the condition of the above obligation is such, that if the said John Clark shall well and truly prosecute with effect his said writ of error, and pay to the said James McClintock, his heirs, executors, and administrators, and assigns, the damages, costs, and charges aforesaid, adjudged unto him by the said circuit court, and also all such damages, costs, and charges, which may be awarded to him by the said Supreme Court, in case he shall fail to make good his said plea, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

JOHN CLARK, [L. S.]
G. W. WARD, [L. S.]
JOHN W. BRUFF. [L. S.]

Signed, sealed, and delivered, in presence of—
THO. SPICER.
Approved: R. B. TANEY.

The United States of America, to James McClintock, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, wherein John Clark is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said John Clark, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf. Given under my hand and seal, this fifth day of May, in the year of our Lord one thousand eight hundred and fifty-two.

R. B. TANEY.

I acknowledge notice of the above citation.

JNO. NELSON,
Attorney for McClintock.

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In testimony that the foregoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit [court,] [SEAL.] this sixth day of May, in the year of our Lord one thousand eight hundred and fifty-two.

THO. SPICER,
Clerk, circuit court.